UNITED
NATIONS

CCPR

International covenant
on civil and
political rights

Distr.
GENERAL

CCPR/C/SR.1597
24 July 1997

Original: ENGLISH

HUMAN RIGHTS COMMITTEE

Sixtieth session

SUMMARY RECORD OF THE 1597th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 21 July 1997, at 10 a.m.

Chairman: Mr. BHAGWATI

CONTENTS

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Third periodic report of France

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.97-17454 (E)

The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Third periodic report of France (CCPR/C/76/Add.7)

1. At the invitation of the Chairman, Mr. Perrin de Brichambaut, Mr. Bernard, Mr. Faugère, Mr. Avel, Mr. Charpentier, Mrs. Giudicelli, Mrs. Doublet, Mrs. de Calan, Mr. Lefeuvre, Mr. Sévère-Jolivet, Mr. Lagèze, Mr. de Belay, Mr. Morize-Rabaux, Mr. Nedelec and Mrs. Paradas-Bouveau (France) took places at the Committee table.

2. The CHAIRMAN said that the Committee was particularly pleased to welcome representatives of the State party which had appointed as one of its members such a distinguished judge, jurist and scholar in human rights law as Mrs. Christine Chanet, its current Chairman and the first woman to preside over its affairs. He recapitulated the procedure followed in considering reports submitted by States parties under article 40 of the Covenant and invited the head of the French delegation to make an introductory statement.

3. Mr. PERRIN de BRICHAMBAUT (France), underlining the importance that France attached to the present exercise, said that the third periodic report before the Committee (CCPR/C/76/Add.7) outlined the major changes which had occurred since the submission of the second report in French law and its application as they affected the protection of the rights set out in the Covenant. In his introduction, he would address three basic themes: de jure and de facto recognition of the equal dignity of individuals in law and in practice; the status of aliens choosing to reside in France; and improvements in the legal and prison systems.

4. Constantly striving to improve the implementation of its three founding principles of liberty, equality and fraternity, and to extend to everyone the protection of the law, the French Republic was keenly conscious of the impact of the latest developments in science and technology on human beings at every stage of their existence, from the cradle to the grave. Indeed, the right to life had never before been the subject of such attention and concern. The National Advisory Committee on Biomedical Ethics, an independent body set up in 1983, was studying a great number of related issues, with a mandate to set its findings and recommendations before the authorities.

5. In 1994 three laws fundamental to the protection of human rights in the biomedical domain had been enacted: one concerning the processing of personal data for the purpose of health research, which had supplemented the earlier Act of 1978 on electronic data processing, data files and freedoms; the second relating to respect for the human body; and the third regulating the donation and utilization of human substances and organs, medical assistance, procreation-related issues, antenatal diagnoses and genetic manipulation.

6. France had contributed the experience gained during the drafting of that legislation to the deliberations of the Council of Europe on the landmark Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Bio-medicine, adopted in

November 1996. More recently, at the request of the President of the Republic, the National Committee on Ethics had given its views on the subject of human reproductive cloning, and France was active in the European forums that were discussing that vital matter.

7. Turning to the broader issue of the rights of the individual, he recalled the guarantees set forth in article 1 of the French Constitution, which were backed by article 8 of the Civil Code. Complete equality between men and women had been a long-standing objective, but since the early 1980s, a great deal of progress had been made, and he listed some of the successes achieved in both the private and public domains through new legislation. Action had also been taken to eliminate residual discrimination against women, to eradicate conjugal violence and to criminalize sexual harassment, including in the workplace. Since October 1995, a watchdog body had been monitoring parity between men and women, both in France and abroad, carrying out public information activities and advising the authorities on related issues.

8. More generally, the prohibition of all behaviour that ran counter to the established principle of equality before the law or violated individual dignity was not just a matter for the lawmaker. It was incumbent on all citizens to respect the right to be different, and a number of laws to help them do so had been enacted, notably as a means of combating all forms of racism and discrimination on any other grounds. The revised Penal Code of 1994 had extended the scope of protection against discrimination since penalties could now be imposed for discrimination against not only individuals but also legal entities, and discrimination on grounds of political opinion or trade union membership. That demonstrated France's commitment to the denunciation and repression of all ideologies which offended human dignity or denied the equal value of each individual. Only the preservation of individual dignity without distinction of origin or status could guarantee harmonious coexistence between the various communities and promote the integration of foreigners.

9. As to the status of aliens in France, the basic considerations which determined national policy in that regard were: the need to control immigration, which formed part of the country's history and contributed to its wealth and influence but could not be allowed to continue unchecked; and the need to respect fundamental human rights. He reviewed the most recent legislation and jurisprudence relating to immigration, designed to be as protective of the fundamental rights and freedoms of aliens on French soil and their families as they were repressive of clandestine or fraudulent entry into the country. The Government which had come to power after the elections of June 1997 was committed to building on the progress of the past decade, and more especially to resolving various problems that had arisen in connection with the application of the new laws; its intention was to be firm and at the same time generous, realistic and respectful of the nation's values. Its immigration policy would be based on the twin principles of "republican integration" and joint development with the immigrants' countries of origin. A bill would be submitted to Parliament in the autumn of the current year, and the whole body of legislation relating to nationality would be reviewed. In the meantime, procedures had been set in motion to regularize the situation of certain categories of aliens illegally present in France.

10. Concerning recent improvements in the judicial and prison systems, he noted with satisfaction that French courts were referring increasingly to the Covenant and to the standards which it embodied. Since the submission of the second periodic report, a great deal of legal reform had been undertaken, both in the domain of administrative law and in the fields covered by the Penal Code, whose overall philosophy, dating back to the early nineteenth century, had been thoroughly overhauled between 1992 and 1994. The revised Code, which established some important new concepts, including those of the criminal responsibility of legal persons and deliberately endangering others, had secured virtually unanimous approval in Parliament as a unique and clear instrument expressing the values and responding to the requirements of modern times.

11. The Code of Criminal Procedure had also been reformed, with the same goals of improved administration of criminal justice and the strengthening of guarantees for suspected persons and claimants for criminal indemnification. He described new limitations on pre-trial detention, notably of minors, and measures designed to expedite appeal procedures, to further consolidate the principle of the presumption of innocence, to establish greater equality between the prosecution and the defence at the pre-trial stage, and - in general - to protect the rights of suspects and accused persons and to help injured parties to obtain justice. He further mentioned numerous recent innovations relating to the imposition, substitution and serving of sentences.

12. Since 1995, steps had been taken to make increased public funds available for improving conditions of detention and to reduce overcrowding in prisons. As at 1 January 1997, the total prison population, housed in 187 establishments, had been just over 54,000 of whom 22,600 had been awaiting trial. The rate of occupancy - 109 per cent - marked a notable decrease in comparison with earlier years. Legislation had been enacted in 1994 to integrate the prison population and their dependants into the general system of public health care. In 1996, steps had been taken to harmonize disciplinary procedures within the prison system, in accordance with the jurisprudence of the European Court of Human Rights and the Council of Europe recommendation on prison regulations. The basic aim was to protect the rights of prisoners, notably by establishing a scale of penalties for various categories of offence and by making provision for appeal against such punishment.

13. Time constraints had prevented him from giving more than a rapid overview of reforms already completed or under way in areas covered by the Covenant. Other measures had been set in motion or announced by the Prime Minister in his general policy statement of 19 June 1997. They related, inter alia, to the modification of the organizational structure of the judiciary, the reinstatement of the ius soli as a criterion for obtaining nationality, the launching of a major plan to combat violence in schools and disadvantaged areas, the establishment of an independent body to monitor police ethics, the creation of a health protection agency, and lastly, the automatic entry of each citizen on the electoral roll upon attaining his or her majority.

14. His delegation would not presume to claim that France was irreproachable or exemplary. It had merely endeavoured to review some of the things done in the past few years to confirm the existence of civil and political rights and to facilitate their enjoyment, both in the spirit of the Covenant and in the tradition of the French Republic. In his policy statement, the Prime Minister had undertaken to review attentively all the international human rights instruments to which France was not yet a party, with a view to accession. That was a measure of the commitment to human rights which his delegation would attempt to demonstrate further in its replies to the Committee's questions.

15. The CHAIRMAN invited the delegation of France to answer the questions contained in part I of the list of issues (M/CCPR/C/60/Q/FRA/2).

16. Mr. CHARPENTIER (France), replying to question 1, said that French law on asylum was based on the preamble to the Constitution of 1958, the Convention relating to the Status of Refugees of 28 July 1951 and the Protocol relating to the Status of Refugees. The Act of 22 July 1952 entrusted the Office for the Protection of Refugees and Stateless Persons (OFPRA) and the Refugee Assistance Commission with responsibility for examining applications for refugee status. OFPRA was a public independent body under the Ministry of Foreign Affairs which was competent to grant refugee status, following individual examination, to persons meeting the definition contained in article 1 of the Convention relating to the Status of Refugees.

17. The procedure required asylum-seekers to deposit their requests with prefectures, which could deny them having access to OFPRA only if competence in fact lay with one of France's European partners under the Schengen Agreement or the Dublin Convention. Investigation of requests was undertaken by OFPRA either in the simplest cases from the files or after interviewing the asylum-seeker. In 1996, some 45 per cent of requests for asylum had been heard orally at OFPRA. It was considered preferable to reserve interviews for persons of particularly sensitive nationalities, also whenever a file revealed an area of uncertainty an interview was obligatory. OFPRA frequently checked with French consulates abroad in order to verify the authenticity of either facts or documents.

18. In the case of refusal, an asylum-seeker had the right to appeal within one month to the Refugee Assistance Commission, which was an administrative body composed of three members, namely, a chairman of State counsellor rank, an assessor who was a member of the governing board of OFPRA and an assessor who was a representative of the Office of the United Nations High Commissioner for Refugees (UNHCR). The composition of the Commission guaranteed its competence and independence, and it was the only example within French jurisdiction of a body on which the representative of an international organization sat with deliberative power. Appeals to the Commission were free of charge and the procedure was adversarial. The services of a counsel and an interpreter were available to asylum-seekers.

19. The maximum time for reaching a decision regarding refugee status varied according to the complexity of the case, but in 90 per cent of cases the examination was completed in less than three months. In more complicated cases, especially those requiring verification with consulates, the period was

longer. The asylum-seeker had the right to stay in France for the entire period required for his case to be considered: he was issued with a residence permit by the prefecture, and in exchange for his request for asylum he was given a receipt valid for three months and renewable.

20. The right to stay in France also meant that he could be housed collectively in a reception centre or, if he chose an individual solution, he was eligible for financial assistance. In the latter case, from the moment he deposited his request with OFPRA, the asylum-seeker received an allowance of about FF 2,000 per month, with an extra sum for dependent children, an integration allowance and social security cover. If he opted for collective housing he did not receive any financial assistance, but was taken care of by France Terre d'Asile, which had a management contract with the State and covered all daily expenses of the asylum-seeker and his family. The reduction of the maximum time for reaching decisions and the fact that in many cases asylum-seekers were trying to live in France for purely economic reasons had led, since 1991, to withdrawal of their right to work in France.

21. Mr. FAUGÈRE (France) described the procedure, governed by an Act of 6 July 1992, for enabling asylum-seekers at the frontier to enter French territory. Competence in that matter was exercised by the Ministry of the Interior. A person seeking admittance to France as an asylum-seeker was kept in a waiting zone during the time needed for his request to be considered. Requests were considered individually and a decision to refuse entry could be taken only if the request was manifestly unfounded. The asylum-seeker was heard by an expert from OFPRA, who gave his opinion on behalf of the Ministry of Foreign Affairs; that opinion was transmitted to the Ministry of the Interior, where the decision was taken. A request was refused, as manifestly unfounded, on only two conditions: if it was outside the scope of the Convention relating to the Status of Refugees in that the person concerned did not invoke fear but rather personal considerations, such as seeking employment or better living conditions; or if it had no credible justification, being lacking in substance and containing insurmountable improbabilities or contradictions. When a request was not judged to be manifestly unfounded, the asylum-seeker was admitted to France and given a safe conduct enabling him to contact a prefecture and embark upon the procedures described by the previous speaker. If the request was judged manifestly unfounded, he was informed of the refusal of entry and could be expelled.

22. During the entire period he was kept in the waiting zone in the international area of the port or airport. The Act of 6 July 1992 had been supplemented by an Act of 27 December 1994, which broadened its scope to cover railway stations handling international traffic. The opening of the Channel tunnel had been an important factor in that law's adoption. The time-limit for keeping an asylum-seeker in the waiting zone when his request for entry had been refused was fixed by law at four days for an administrative decision; that period could be extended by eight days and exceptionally by a further eight days by a judge. From the moment he entered the waiting zone, the asylum-seeker was informed of his rights, if necessary through an interpreter, and when a judge took a decision to extend the time-limit he interviewed the asylum-seeker, if necessary in the presence of a counsel. Foreigners held in waiting zones had right of access to an interpreter, a lawyer and a doctor, and the right to communicate with anyone else of their choice.

Representatives of UNHCR had access to the waiting zone and could have confidential talks with persons held there, who could also be seen by five humanitarian associations accredited under a decree of 1995. In 1996, UNHCR representatives had made 22 visits to waiting zones, and the humanitarian associations had made 31. Annual meetings were now held with representatives of UNHCR and the accredited humanitarian associations. Accommodation conditions in waiting zones were in general deemed to be satisfactory, but a problem had arisen in one of them, namely, the Ibis hotel at Paris-Charles de Gaulle airport, and in full agreement with the humanitarian association involved, the hotel was being completely refurbished.

23. In 1996, 5,646 persons had been placed in waiting zones, and of that figure only 526 had been asylum-seekers. More than half of the asylum-seekers had been admitted to the French territory because their requests had not been manifestly unfounded. The average stay in the waiting zone was two days for asylum-seekers and 30 hours for persons who were not asylum-seekers and were simply not admitted.

24. Turning to question 2 on the list of issues, he said that at first sight no direct impact by the Schengen Agreement could be deduced as far as implementation of articles 12 and 13 of the Covenant was concerned. There had also been no real changes regarding the expulsion of foreigners illegally present in France. Any expulsion undertaken by a State party to the Schengen Agreement could be applied by any other State party. The intention was to prevent multiple requests for asylum being lodged in several States parties, to put a stop to prolonged stays in the Schengen area that were not genuinely backed by asylum requests, and to avoid the phenomenon of asylum-seekers "in orbit", where States parties might be tempted to send them on from one country to another without taking responsibility for considering their asylum requests. Both the Schengen Agreement and the Dublin Convention placed that responsibility on a single State. The problem did not arise often, but France had asked its partners to take back some 1,000 asylum-seekers. The Schengen Agreement and the Dublin Convention had not resulted in any substantive changes regarding consideration of requests for refugee status.

25. As to the impact of the adoption of recent laws to counter illegal immigration, the laws concerned were dated 24 August and 30 December 1993 and 24 April 1997. They established the requirement to provide a reason for a decision to refuse entry and created the possibility of obtaining a 10-year residence permit almost automatically after three years' legal residence, which gave a person the right to exercise the profession of his choice. French law was favourable to the social integration of foreigners legally present in France; that was demonstrated by the fact that approximately 90,000 such people acquired French nationality every year. The law also maintained the right of appeal to a judge to secure a stay of expulsion.

26. There was very strict monitoring to ensure that due consideration was given to a person's personal and family life, and a government circular of 9 April 1996 contained an instruction to ensure that individual decisions took due account of France's international commitments. There was also monitoring by a judge of the conditions of administrative detention in which

foreigners were held pending expulsion; there was a limit of seven days on detention by judicial decision, and exceptionally a further three days by a second such decision.

27. The laws of 1993 and 1997 were based on the need to ensure that public order had been respected before a residence permit was issued and on a desire to combat fraud, which had led to imposition of the condition that a foreigner must have been married to a French national for at least one year in order to acquire a residence permit by that method. Another new requirement had been that full access to a 10-year residence permit was subject to the continuous residence of the person making the request. A new element in the 1997 law had been that fingerprinting was permitted when a foreigner was found to be present illegally and his papers were withheld. That law had also changed the legal regime for administrative detention by increasing the period in which a judge must take a decision regarding its extension from 24 to 48 hours. That aspect of the law, which was designed to curb illegal immigration more effectively, was offset by a codification of the rules on family ties. There had also been codification of rules under which illegal foreigners could be repatriated: they could not be sent back to a country where they faced danger. The 1997 law had also prohibited sending sick people back to countries where they could not receive appropriate treatment.

28. The Act of 24 August 1993 had revealed difficulties experienced by certain categories of foreigners in obtaining residence permits, while legally speaking they could not be removed from French territory. They were not fully entitled to a residence permit but at the same time they could not be the subject of an expulsion order. The Act of 24 April 1997 made it possible for them to obtain a one-year residence permit; those chiefly concerned were spouses of French nationals, parents of French children and foreigners who had been living in France, even illegally, for more than 15 years.

29. Of themselves, the recent laws had not had any impact on legal immigrants because they fully respected the fundamental rights provided under the Covenant and the French Constitution. However, some difficulties had arisen. For certain foreigners who had had the right of entry to French territory that right had been curtailed. The numbers of those involved under family reunification had fallen from 33,000 in 1992-1993 to fewer than 14,000 in 1995-1996. There had also been legal conflicts which the law of 24 April 1997 had tried to resolve, but new legislation took some time to enter into practice, notably regarding dealing with foreigners in prefectures, time limits and the fact that foreigners' rights in France had become too complex and difficult to understand. There was an obligation to make them clearer.

30. Measures to expel foreigners illegally present in France had been taken in a relatively small proportion - 30 per cent - of cases, and quite a number of people were continuing to live in France despite the irregularity of their residence status. If that situation continued, other measures would have to be taken. In 1991, the Government had decided to regularize the situation of asylum-seekers, and a similar measure had been taken through a circular of 24 June 1997 by which, following various expressions of support for undocumented foreigners, the Government decided to regularize certain situations it judged to be untenable. One particularly controversial policy

of the previous Government had been that of group expulsions, which had created difficult relations with the countries of emigration. An important role in the immigration debate generally had been played by the National Consultative Commission on Human Rights, which in its opinion of 12 September 1996 on the situation of undocumented foreigners had been of crucial significance in the drafting of the circular of 24 June 1997 regularizing certain situations.

31. The Government's objective was to combine firmness with generosity, keeping a necessary balance, and avoiding excessive severity and the unrealistic opening of borders. It did not accept the principle of "papers for all" but wished to ensure the integration of foreigners, with the provision of a quality public service and a law in harmony with the desire to ensure respect for family life, for differences and for a general openness towards foreigners, especially those wishing to pursue their studies in France. Immigration policy had a police function but also had a social policy dimension and aspects of a joint development policy. There was to be a new law on nationality, and legislation on foreigners' rights in France would be made simpler, clearer and more balanced.

32. Providing information on the extent of racist, xenophobic and anti-Semitic trends and activities, as requested in question 3 of the list of issues, he said that recent statistics showed that the Government's policies were achieving results. While he did not underestimate the difficulties involved in compiling such statistics, it did appear that there had been a decline in acts of racist violence over the past few years: thus, 52 had been recorded in 1991, 35 in 1994, 19 in 1995 and only 9 in 1996. The incidents also seemed to be becoming less serious: although 4 persons had been wounded in 1996 in racist attacks, no deaths had occurred, and the number of incidents involving threats, insults and intimidation had declined from 480 in 1995 to 195 in 1996. The proportion of racist attacks against the North African community in France was likewise declining, although it accounted for the highest proportion (77 per cent) of the total, and was largely concentrated in Paris, Provence and the Côte d'Azur.

33. The same was true for anti-Semitic violence, which seemed to have become a marginal phenomenon. In 1996 only 1 anti-Semitic attack had been recorded, as against 24 in 1991 and 11 in 1994, and cases involving anti-Semitic insults had fallen from 120 in 1994 to 89 in 1996. The policy of actively promoting integration by targeting particular problem neighbourhoods was proving effective.

34. The law provided a very wide range of penalties for racist offences. Thus, the Press Act of 29 July 1990, one of the most important weapons in the struggle against racism, prohibited public incitement to discrimination or racial hatred, to defamation, or to crimes against humanity. The Ministry of the Interior monitored all publications and reported any infringements of that Act. In 1996, seven infringements had been reported, two of which had resulted in prosecution. Under the Act of 10 January 1936, associations or groups having the purpose of inciting hatred or violence on grounds of racial or ethnic origin could be disbanded: the Fédération d'Action Nationale Européenne (FANE) had been dissolved three times under that Act between 1980 and 1987. The Ministry of the Interior also had powers to act under the Act

of 16 July 1989 to ban any publications for young people which had racist aims. In 1996, 30 foreign-language publications containing racist material had been prevented from entering France under a law dating from 1881.

35. The departmental cells for combating racism, xenophobia and anti-Semitism played an important role in prevention. They were composed of government officials, members of the judiciary and representatives of local authorities and voluntary associations, and their task was to record racist phenomena, encourage the amicable settlement of disputes, and initiate educational programmes. In schools, for example, they had organized film shows about racism and cultural activities under the theme of tolerance.

36. The Fund for Social Action for the benefit of Immigrant Workers played a similar role: it had organized a "Week against Racism" in 1995 in more than 1,000 schools. The Fund also promoted initiatives in the field of vocational training, such as the sponsorship scheme launched in 1995 which had assisted 1,000 young people from abroad. Associations working to promote better understanding of the richness of the contribution made by foreigners to French culture were awarded government grants. A large-scale programme for the integration of foreigners into French life had been launched in March 1997, and was to be further developed in the coming months.

37. Further examples of moves against racism were the repeal of the provision whereby only persons with one parent of French nationality were entitled to a grant for the birth of a third child, and a decision by the authorities in Bordeaux that it was illegal to refuse a child of foreign nationality the right to register in school on the grounds that its parents were illegally present in France. Of particular importance was the decision of 13 August 1993 banning any form of classification of persons on the basis of ethnic origin.

38. Mr. AVEL (France), replying to question 4 concerning offences committed by public officials during the period under review, said that in France respect for human rights, as defined in the Declaration of 1789 and confirmed by the Constitution of 1946, was binding on everyone, and more particularly on officials responsible for maintaining public order and upholding the law, who were expected to be above reproach. Such offences had been made subject to more severe penalties under the new Penal Code: thus, acts of violence resulting in the victim being unable to work for more than a week, normally punishable by three years' imprisonment or a fine of 300,000 francs, were now punishable by five years' imprisonment or a fine of 500,000 francs when committed by public officials in the course of their duties.

39. Three years earlier, a new unit had been set up within the Ministry of Justice to formulate general guidelines on the role of the judiciary vis-à-vis the Judicial Police and to coordinate the activities of the latter with those of the prosecution service. The Public Prosecutor's Office was well aware of the seriousness of such offences by public officials, and if they were proven, the perpetrators would be prosecuted and severe penalties called for. Besides penal sanctions, the Code of Criminal Procedure also provided for measures such as withdrawal of entitlements and functions from officers who had failed to meet the professional and moral standards required of the Judicial Police.

40. Providing figures for the period under review, he said that there had been 44 disciplinary punishments, including 3 dismissals, between 1988 and 1997 for violence committed by prison staff against detainees. There had also been two cases of dismissal for sexual relations with detainees. However, most offences were those of striking and wounding: there had been six cases in 1989, two in 1991, eight in 1993 and seven in 1995, all resulting in fines or imprisonment.

41. The procedures for investigating such cases were of two kinds: first, an administrative investigation, followed by disciplinary action if the offence was proved, and secondly, referral of the case to the prosecution service, which would then decide whether or not to initiate criminal proceedings. In 1995, there had been 289 cases concerning 611 law enforcement officials. Of those, 232 had ended in dismissal of proceedings, 21 had led to convictions, and in 43 cases the officials concerned had received criminal convictions as well as administrative penalties. The sentences handed down had ranged from fines to imprisonment. In 1994, a court had given an official one year's suspended sentence for striking and wounding which had led to the death of the person concerned. In 1996, an assize court in Paris had tried an inspector of police for assaulting a detainee who had later died as a result of his injuries. He had been convicted of intentional violence and sentenced to eight years' imprisonment. In Lille, a police officer had been sentenced to 24 months' imprisonment for fatally injuring a person during an arrest, and in Nice in 1995 two police officers had been convicted for indecent assault and abuse of authority and sentenced to two years' imprisonment.

42. Mr. FAUGERE (France), responding to the question on use of weapons by the police (question 5 on the list of issues), pointed out that the use of weapons by police officers was permitted only in self-defence. By a note of 3 July 1995, which was still in force, the Director of the National Police Forces had reminded police officers that self-defence could only be invoked in response to a positive act of aggression or to an urgent need to defend themselves or others, and only if the defence was proportionate to the attack. The note stated that the use of weapons was not called for in situations such as, for example, stopping and questioning persons at roadblocks, when other methods must be used.

43. However, weapons were used in exceptional circumstances. In 1995 they had been used in 367 cases, leading to 30 cases of injury and 8 deaths; in 1996 in 295 cases, causing 7 injuries and 2 deaths. Though it was difficult to draw conclusions over such a short period, it could be said that the use of a weapon by the police was a marginal phenomenon, involving only 1 out of every 130 police officers, and that it resulted in very few cases of injury and even fewer deaths. Between 1990 and 1995, only 29 police officers had been brought before a disciplinary board for unauthorized use of weapons.

44. Mr. de BELAY (France) said that the use of weapons by members of the gendarmerie was regulated by articles 122.4 and 122.5 of the Penal Code. By law, police officers were only entitled to use weapons when subjected to violence, when threatened by armed individuals, when unable to defend their

posts or persons entrusted to their care by any other means, or when resistance was such that it could not be overcome except by force of arms. At all levels of training, emphasis was placed on restraint in the use of force, and particularly on restraint in the use of weapons. Officers were trained to act in strict compliance with the law and to show respect for the human person in the widest possible range of circumstances. They were made aware of their duties and responsibilities as members of a public service, and the training they were given was designed to ensure respect for both individual and public freedoms.

45. The use of firearms by the police and gendarmerie was subject to rulings by the judiciary in all cases of complaint. The Court of Cassation had ruled, on 16 January 1996, that the use of weapons pursuant to the Penal Code was restricted to officers in uniform. In addition to any court proceedings arising from inquiries into complaints, the gendarmerie itself could institute disciplinary proceedings. Other measures, such as circulars issued to army personnel, stressed the need for the greatest care at all times in the use of weapons. For those reasons, it had not been deemed necessary to repeal the Decree of 1943.

46. Mr. LAGEZE (France), referring to question 6 on the list of issues, said that French legislation to deal with acts of terrorism was contained essentially in the new Penal Code of 21 March 1994, whose provisions had largely replaced those of the Code of 9 September 1986. The basic aim was to strike a balance between a requisite degree of deterrence and respect for individual freedoms. Two categories of terrorist act were recognized, covered by articles 421.1 and 421.2 of the Code. The former recognized as terrorism a range of acts such as threats to life, kidnapping, hijacking, the use of explosives, and individual or collective acts aimed at undermining public order and safety. The latter recognized punishable acts of ecological terrorism such as deliberate contamination of land, water and the air on French national territory, including waters under its maritime jurisdiction, with the aim of endangering public health or the environment or paralysing economic activity. Offences deemed to have been acts of terrorism carried more severe penalties than those applicable for similar acts not deemed terrorism; for example, a 30-year sentence for a murder conviction could become a life sentence if a charge of terrorism was involved.

47. Proceedings in cases of alleged terrorism were subject to a special regime which, inter alia, provided that a suspect could be detained without access to a lawyer for 72 hours instead of 24. And hearings took place not in the ordinary courts but before specialist judges. With regard to police powers, further legislation had been adopted since the submission of France's previous periodic report to provide, inter alia, for heavier penalties than those set forth under the Code of 9 September 1986. In addition, as a result of the numerous terrorist acts perpetrated during the summer of 1995, a law enacted on 22 July 1996 had expanded the definition of terrorist acts, which now included the offence of complicity. The provisions of the Code of 9 September 1986 survived only in part, since it had been superseded by the Code of 1994. Police powers in regard to anti-terrorist action differed from

their powers in other respects only in that a person could be detained in custody for four days instead of two, subject to authorization by a magistrate or the president of the court concerned. The person detained must first of all be brought before the authorities and undergo a compulsory medical examination.

48. Under the special regime, premises could in certain cases be searched without the occupier's consent, but only on the express decision of a court or prosecutor. Likewise, search and seizure of papers, for example, could take place between 6 p.m. and 6 a.m., with a judge's special authorization, in cases of serious crimes where there was an immediate risk that evidence could be lost or where further offences could be expected. Such night searches were subject to prior justification and a judge's warrant. It was felt that those provisions implied no derogation from articles 9 and 14 of the Covenant.

49. Mrs. GIUDICELLI (France), referring to question 7, said that during 1996 the prison inspectorate had carried out 101 visits, either for routine inspections or to investigate particular incidents. In addition, there were frequent inspections of health conditions, which could also be carried out at the request of individual detainees; complaints in that regard had risen in 1996 by 11.4 per cent over 1995. The Code of Criminal Procedure also provided for a supervisory committee, chaired by the prefect and composed of local legal and administrative authorities, which met at least once a year, heard detainees' complaints and reported to the Minister of Justice. In addition, visiting magistrates had powers to inspect prisons and give advice. And a progressive policy had been followed, for over 20 years, of integrating prisons more closely within society and allowing outside agencies to play a part in the supervision of prisons.

50. Pursuant to the Code of Criminal Procedure, any detainee could request a confidential hearing before judges and prison inspectors, without the presence of any member of the prison personnel, and was entitled to send sealed mail at all times - a right which was carefully monitored. In 1996, the central administration had received over 5,000 requests from detainees in that way. Detainees also had the right of recourse under ordinary law, before independent administrative authorities, the European Court, the European Commission of Human Rights or, in particular, the ordinary French courts. An increasing number of complaints in that regard had been brought, particularly in disciplinary matters, since the Council of State had accepted the admissibility of recourse in disciplinary cases. Prison personnel were also given training and instruction in prisoners' rights, including a handbook for the use of supervisory staff.

51. Reference to the third periodic report (CCPR/C/76/Add.7) would show the progress made in prison regulations and conditions of detention over the past 20 years. Improvements included the right to personal clothing, access to television and telephone, and preparation for the return to society on release. Detention conditions for minors had also improved.

52. Overcrowding of prisons, although currently 109 per cent as against 150 per cent in 1988, remained a problem. The growth in the number of prisoners, from 31,655 in January 1977 to 54,496 in January 1997, was due not

to the number of prison sentences, which had been stable at around 84,000 since the 1980s, or to pre-trial detention, which had been stable since 1985, but to an increase in the average length of sentences, from 4.3 months in 1975 to 7.8 months in 1997. One measure being taken to relieve the problem was a five-year budget allocation, authorized by the Act of 6 January 1995, of 3 billion francs, for recruiting some 4,000 prison personnel and instituting a programme to create 3,870 new prison places. Since 1991, measures for amnesty and pardon had been increasingly used in order to alleviate the problem. The Ministry of Justice was placing its greatest reliance, however, on the development of alternative measures to imprisonment, such as community service, which had been increasingly used since 1990. One measure, in that regard, was the system of temporary release, or probation, a review of which had been initiated by the new Minister of Justice. In general, the current emphasis was on measures to reduce the periods of actual imprisonment, and to make conditions more progressive and open.

53. Mr. LAGEZE (France), referring to question 8, said that under French law the subject of pre-trial detention was broadly defined as covering the entire proceedings from the beginning of inquiries to final judgement and, if applicable, appeal hearings. It could be difficult, of course, to make international comparisons because of differences in procedures. Periods varied according to the nature of the offences in question, but recent legislative efforts had been aimed at reversing an earlier tendency for periods of detention to increase. For example, figures available for 1995 relating to criminal cases showed an average of 21 months - a slight improvement on the figure of 22.7 months for 1988. It should be borne in mind, however, that the number of persons held in pre-trial detention was less than half the total number of persons under investigation; the proportion had fallen from 44 per cent in 1985 to 34 per cent in 1994. The situation was also influenced by the increasing length of time taken by proceedings and the growing complexity of cases, inter alia because of requirements to comply with international instruments. A new law, which had entered into force on 31 March 1997, was aimed at reducing the length of pre-trial detention, but it was too early to measure its impact. That law, of course, was not the first effort made to reduce the period of pre-trial detention, the Act of 6 August 1995 having already imposed a limit, but it reflected the constant concern to reduce that period.

54. The new provisions also addressed the notion of reasonable delay, and stipulated that an examining magistrate must end pre-trial detention once it had reached a certain limit. That approach conformed to article 5 of the European Convention on Human Rights. The new law provided that extensions must be reviewed every six months, not annually. It also set time limits more favourable to the detainee - for example 1 year, instead of 2 years under previous legislation, in connection with charges for offences carrying a sentence of less than 5 years, and a maximum of 2 years in the case of those carrying a sentence of between 5 and 10 years - a category formerly subject to no time limit.

55. The CHAIRMAN thanked the delegation of France for the replies relating to part I of the list of issues, and invited the members of the Committee to ask any further questions they might have.

56. Lord COLVILLE thanked the French delegation for the detailed replies given. Referring to question 6 on the list of issues, he noted that nothing had been said about article 450 of the Penal Code relating to criminal conspiracy. Since cases dealt with under that article, as well as those covered by article 421 already mentioned, were dealt with by special courts, he would like to have information about the system of appeal - an important issue in cases tried in the absence of a jury. He would also welcome information on supervision in relation to the longer-than-normal periods of detention permitted under the anti-terrorism provisions. In the United Kingdom, for example, supervision was carried out by an independent inspector who had access to the detainees and to all relevant documentation, and reported annually to Parliament, which also reviewed its anti-terrorism legislation every five years. If no such system existed, one should be introduced.

The meeting rose at 1.05 p.m.

UNITED
NATIONS

CCPR

International covenant
on civil and
political rights

Distr.
GENERAL

CCPR/C/SR.1598
20 October 1997

ENGLISH
Original: FRENCH

HUMAN RIGHTS COMMITTEE

Sixtieth session

SUMMARY RECORD OF THE 1598th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 21 July 1997, at 3 p.m.

Chairman: Mr. BHAGWATI

CONTENTS

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Third periodic report of France (continued)

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.97-17467 (E)

The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Third periodic report of France (continued) (CCPR/C/76/Add.7; HRI/CORE/1/Add.17/Rev.1; CCPR/C/60/Q/FRA/3)

1. At the invitation of the Chairman, the members of the French delegation resumed their places at the Committee table.

2. The CHAIRMAN invited the members of the Committee to ask the French delegation questions relating to part I of the list of issues (CCPR/C/60/Q/FRA/3).

3. Mr. PRADO VALLEJO said that, having participated in the consideration of France's initial report and second periodic report, he was confident that the constructive dialogue which the Committee had already begun with the French delegation would continue and that the Committee would be fully informed of the difficulties encountered by France in implementing the Covenant and the measures taken to overcome them.

4. On that point, although it was obvious that French legislation provided full protection for human rights, the Committee had learned of certain specific cases in which articles of the Covenant, in particular articles 6 and 7, had not been fully respected. Complaints had been lodged concerning ill-treatment of private individuals by the French police and gendarmerie, in both metropolitan France and the overseas departments and territories, and the necessary inquiries had not been ordered, allowing those responsible to go unpunished. That was an obvious failure by the State party to fulfil its obligations under the Covenant.

5. He had also learned of incidents that had occurred in Tahiti, French Polynesia, in September 1995, and of police brutality against demonstrators; he would like to know whether the French Government had begun the necessary inquiries. Similarly, in New Caledonia, there had been many cases of torture and death in police custody since 1978, and it was disturbing to note that the French Government had seen fit to enact an amnesty law providing impunity for those responsible and clearly violating the victims' rights. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment had protested at the cases of ill-treatment of detainees in French prisons, and he wondered whether the French Government intended to take steps to correct that unfortunate situation. He would also like to know why a distinction was made in France between the police and the gendarmerie: apparently only the gendarmerie were authorized to use firearms when an incident occurred.

6. It was his understanding that the French anti-terrorism legislation provided for persons charged with offences against State security to be tried by special seven-person courts, whose decisions were handed down on the basis of a simple majority, an emergency measure which in his view was not necessarily justified. He would accordingly like to know the reason for that provision. In addition, the legislation appeared to be applied almost

systematically to Basques; some members of that community were arrested and placed in detention without any criminal charge. Perhaps the delegation would be able to provide explanations.

7. He noted that conscientious objectors in France had the possibility of performing civilian service instead of military service. However, civilian service was twice as long as military service - 20 months instead of 10. He therefore wondered whether such a measure was not punitive in character for those who opposed military service. Did the French Government intend to amend the relevant provisions in order to bring them into line with internationally-accepted standards?

8. Mr. KLEIN said that he also welcomed the continuing dialogue with the French delegation and hoped that it would shed some light on the aspects of the human rights situation in France which remained disturbing.

9. He, too, had been informed of the large number of unjustified acts of violence perpetrated by officers of the police and national gendarmerie. As he understood it, the gendarmerie was a military institution which came under the purview of the Ministry of Defence, which might raise some questions as to why civilians should be subject to a military authority. He had also learned that excesses had allegedly been committed in implementing the French anti-terrorism legislation, which he believed the prosecutor was responsible for applying. He would therefore like to know the prosecutor's status, particularly in relation to the Ministry of Justice, how independent the prosecutor could be in performing his duties and whether he received instructions from the Government. He asked what amendments were planned in the relevant legislation.

10. He understood that detainees in some French prisons were held in humiliating conditions, in particular prisoners of Basque origin. He would appreciate the French delegation providing more details on that question and, in particular indicating whether the provisions of article 10, paragraph 1, of the Covenant were being fully respected.

11. Paragraph 145 of the French report (CCPR/C/76/Add.7) stated: "Convicted prisoners may correspond with anybody, daily without restriction and receive letters from anybody. However, their correspondence may be read and monitored by the prison authorities". He did not contest the need for some monitoring, but would like to know in which particular cases monitoring was carried out. The same paragraph stated that detainees had the right to correspond with European authorities, the list of which was regularly updated. He would like to know whether the Committee was on that list. He asked what steps were being taken to protect prisoners against violence or harassment, in particular sexual harassment, by their fellow-prisoners. In addition, what steps were taken if it was proved that the criminal proceedings had, at any stage, been unduly long? Were detainees released and were they entitled to compensation?

12. Concerning articles 12 and 13 of the Covenant relating to liberty of movement, he would like to know how the non-refoulement principle was applied in practice, and whether an asylum seeker could appeal to the courts in the event of a negative decision and expulsion. In connection with the right to leave the national territory, discussed in paragraph 182 of the report, he

asked what law empowered the administrative authorities to refuse to issue a passport, and whether the list of cases (a) to (f) was still valid. Regarding loss of nationality through declaration by decree, mentioned in paragraph 188 of the report, he asked whether a French national who had lost French nationality in the cases listed could still consider France to be his or her country.

13. Mr. LALLAH thanked the French delegation for resuming its dialogue with the Committee. He was surprised, however, that the Government of France, a highly developed country which did not lack the means to prepare the reports it was under an obligation to submit, had submitted its third periodic report four years late.

14. The report contained a very detailed description of the legal enactments applicable in France, but failed to give precise information on the implementation of the Covenant in practice. He would particularly appreciate clarification from the French delegation on the implementation of articles 2, 23, 24 and 25 of the Covenant, especially with regard to the concept of equality before the law and the independence of the judiciary.

15. A recent article in the French daily Le Monde had referred to discontent among the French judiciary: over 500 magistrates had apparently signed an appeal stating that there was a need to expand the reform of the judiciary, noting that the courts might not be perceived as being fully independent in France and that that situation might be due to the method of appointing judges and prosecutors. He did not know to what extent their method of appointment encouraged prosecutors to take the initiative in instituting legal proceedings, but he was in possession of information to the effect that prosecutors were reluctant to open inquiries into complaints by victims of police brutality. He would like to know the reasons for the prosecutors' reluctance or the difficulties they encountered in acting on such complaints, and to know what kind of deposit was sometimes required for an inquiry to be opened. Was it a cash deposit?

16. The Covenant contained provisions that were not found in the European Convention on Human Rights; he had in mind articles 23, 24 and 25 of the Covenant in particular. Under article 2 of the Covenant, States parties undertook to take the necessary steps, in accordance with their constitutional processes and with the provisions of the Covenant, to adopt such legislative or other measures as might be necessary to give effect to the rights recognized in the Covenant that were not already in force. He stressed the importance of administrative or other measures for guaranteeing the independence of prosecutors and administrative authorities in France. In his own country, a commission independent of the executive was responsible for appointing all judges, from the lower courts up to the Supreme Court. There might, however, be other ways of ensuring the independence of the judiciary: the newspaper article he had mentioned earlier spoke of examination of the candidates by a jury made up of representatives of various sectors.

17. Concerning equality before the law (Covenant, art. 26), he quoted a 3 July 1997 policy paper by the National Consultative Commission on Human Rights concerning the rights of foreigners. The paper contained a brilliant analysis of the principles that should govern not only legislation but also

the practices followed to implement it. After stressing the principle of equality, freedom to come and go, the right to lead a normal life and the right to seek a decent living, the paper made recommendations which appeared to him to be not only necessary but urgent as they pointed up deficiencies in French legislation which prevented people from enjoying equality. Concerning the freedom to enter and leave a territory, for example, and foreigners' access to the national territory in particular, the paper stated that any restrictive legislation or regulations must clearly define the goals justifying them and state how judicial supervision would be exercised.

18. In that context, the right to lead a normal family life was currently governed in France by regulations containing numerous restrictions that were incompatible with the principle of equality. The family reunification procedure continued to be subject to conditions (Ordinance of 1945) which rendered it difficult to apply in practice, as the above-mentioned policy paper also stated. For example, in order to bring his family to France, a foreigner must have been lawfully residing there for two years and have a regular income and a dwelling that met certain standards with regard to size. Partial family reunification was prohibited and unlawful reunification subject to heavy penalties. The note concluded that many foreigners found it impossible in practice to bring their families to France simply because they did not meet all the requirements: they were unemployed or temporarily employed or their dwelling was too small. That raised the question whether a French person who was unemployed or living in a small dwelling was forbidden to live with his or her spouse and children.

19. There also seemed to be two conceptions of family law in France. The first concerned French nationals and took account of changes in society, with for example gradual recognition of free unions, consideration of the child's interests in the event of the parents' separation and, very importantly, broadening of the concept of entitlement to social security. Again according to the above-mentioned policy paper, however, there was a more rigid and narrower conception of family life as it applied to foreigners: cohabitation was not taken into account, divorce implied a "risk", the children must be legitimate children of the couple or they would not be able to enter France, there was widespread suspicion of mixed-race families, marriages between French people and foreigners were automatically suspect, and the prosecutor could delay marriage in case of doubt. Yet article 23 of the Covenant recognized the right of men and women of marriageable age to marry and to found a family. In France, even after the marriage was concluded, it was difficult to regularize the foreign spouse's status, as it was subject to various conditions: one-year wait following the marriage, lawful entry into and stay in France in order to receive a residence permit. All those requirements did not seem to be in line with France's obligations under articles 23 and 24 of the Covenant. Lastly, the policy paper pointed out that some surprising distinctions were made between the various nationalities of foreigners (Congolese, Moroccans, etc.) with respect to the right to seek a decent living. In his view, the recommendations contained in the policy paper should be taken into consideration by the French authorities.

20. Lastly, he asked whether French people living in the overseas departments and territories had the same rights as people living in metropolitan France under the agreements concluded by France with its European Union partners.

21. Mrs. EVATT observed that the French delegation's replies to the questions on the list of issues raised new questions for the members of the Committee. Given that discriminatory behaviour on grounds of race was punishable by law (para. 20 of the report) and that in the event of such behaviour by a private individual the victim could institute proceedings before the civil courts where there had been negligence (para. 35), what needed to be established in court to prove that there had been a violation of the rights set forth in article 2 of the Covenant? In view of the fact that there was an ombudsman responsible for considering violations of rights by the administration, she would like to know whether there was also a mediation or conciliation mechanism for disputes involving a complaint of discriminatory behaviour lodged by a private individual against another individual or private entity, aimed at resolving the conflict out of court.

22. The French Constitution established the equality of all citizens before the law, without distinction as to origin, race or religion (report, para. 394); that provision was clarified in paragraph 26, which stated that the principle of the equality of all citizens before the law implied that persons in identical situations were treated in the same way. She would like to know on what legal basis a distinction could legitimately be made between different people, when for example, there was a need to exempt a person from certain legal requirements on the basis of his or her religion, language or culture. Similarly, she would like to know to what extent France considered affirmative action to be an appropriate means of combating racism and discrimination in access to housing and employment and in other areas where the equality of immigrants might be affected.

23. Questions had already been asked about the ill-treatment and abuse of persons in police custody or pre-trial detention. In that connection, she asked for additional information to that contained in paragraphs 91-94 of the report. She would particularly like to know whether prosecutors had the power and responsibility to institute proceedings when there was indirect or direct evidence that a person in custody had been subjected to violence, abuse or torture. Were prosecutors required to open an inquiry? Or were they required to wait until the victim instituted the procedure by lodging a complaint with a court, which could be financially burdensome for the plaintiff? According to some NGOs, it was rare for inquiries into cases of police brutality against persons in custody to be opened on the initiative of the prosecutor; it was up to the victim to begin the procedure. She would like to know the number of cases of alleged violation of the rights set forth in article 7 in which the procedure had been instituted by the prosecutor, compared with the number in which it had been instituted by the victim. In cases where an internal inquiry into a police officer's behaviour led to a finding of misconduct by the officer, was he suspended during the judicial inquiry? And how soon was such an inquiry opened?

24. In connection with the implementation of article 6 of the Covenant, and in the light of paragraph 87 of the report (CCPR/C/76/Add.7), she asked whether France had considered ratifying the second Optional Protocol to the Covenant. Referring to reports from Amnesty International and other NGOs to the effect that deaths in custody were on the rise and were in many cases due to suicide and lack of supervision, she requested statistics on the number of such deaths, on efforts to monitor the situation and see whether that number

was increasing, on the percentage of deaths from suicide and on the proportion of immigrants or members of minorities among those who had died. According to her information, solitary confinement used as punishment was one of the causes of the increase in cases of suicide among detainees, together with prison overcrowding, harassment and lack of psychological support for prisoners. She would welcome more information on the situation.

25. She would also like clarification of the situation regarding the detention of minors on criminal charges. It was her understanding that children under 13 years of age could not be held in custody or pre-trial detention, but she was not certain; she would particularly like to know whether minors between 13 and 16 years of age could be detained pending trial and for what types of offence. Concerning the legal representation of juvenile offenders, she would like to know whether counsel could review the entire file of a minor charged with a criminal offence. According to her information, the judge allowed the lawyer of a young offender barely 5 or 10 minutes to consult the file in a summary procedure, even though the procedure could result in decisions with far-reaching consequences. She understood that when extrajudicial measures (mediation) were taken, access to a lawyer's services was limited and the minor was not entitled to legal aid. The procedures involved, however, could lead to rehabilitation or re-education measures; she would like to know how the rights of the accused were protected, in particular when the accused was a minor.

26. Lastly, in cases of contumacious judgement, she would like to know whether an accused or convicted person had the right to legal representation, either on appeal or at a new hearing.

27. Mrs. GAITAN DE POMBO said that several of her concerns had already been expressed by other members of the Committee. She would like to know what policies and practical measures were adopted by France to give effect to article 10 of the Covenant, and especially to guarantee the rights of the most vulnerable categories of the population, namely women and foreigners in detention. Her second question concerned the possibility, provided for under French legislation since 1981 for persons who believed that they had been victims of a violation of a right set forth in the European Convention on Human Rights to address themselves to the European Commission and, if their complaints were found to be admissible, to seek an amicable solution, or even to bring their case before the European Court if an amicable solution proved impossible. She would also like to know whether statistics existed on the use of those protection mechanisms, which she regarded as complementing the domestic mechanisms, how many cases had been submitted to the European Court and what domestic procedures were available to give effect to that right.

28. Mr. ANDO said he had several questions about the treatment of refugees. According to information he had received, the Schengen Agreement, to which France was a party, contained a provision intended to reduce the flow of economic refugees seeking political asylum. The desire of Governments to curb that trend was understandable, but one of the methods used by France consisted in requiring the air carrier to pay for the return trips of unsuccessful applicants. In some cases the carrier was also required to pay a very heavy fine. In his view, that practice could have the effect of preventing genuine, good-faith asylum seekers from coming to France because they had not obtained

all the documents required and had been refused a ticket. The delegation had spoken of seeking a delicate balance between firmness and generosity; he would like to know how that balance was to be maintained without harming genuine political refugees.

29. France had concluded extradition treaties with neighbouring countries, notably member countries of the European Union. He appreciated that terrorism was a serious problem in certain European countries, but under those treaties persons suspected of terrorism could be sent back to countries where they might be subjected to ill-treatment or even torture. However, the principle that a person should not be sent back to a country where he or she would run such a risk was an essential tenet of international law. In that case, too, he would like to know how France maintained a balance between the need for the State to protect itself against terrorism and the requirements of international cooperation and the law.

30. Paragraphs 192-199 of the report (CCPR/C/76/Add.7) dealt with the expulsion of aliens, in particular expulsion that could be ordered, in an emergency, without any prior consultative procedure. However, the procedure seemed to be different for foreigners in metropolitan France and for foreigners in the overseas departments and territories (para. 195). He would like to know whether the criteria applicable in each case were different and, if so, whether the delegation could provide specific examples.

31. Mr. BUERGENTHAL, referring to paragraphs 125 and 126 of the report concerning pre-trial detention, said that according to the statistics provided approximately 40 per cent of indicted persons were placed in pre-trial detention. That was a rather high proportion and would appear to indicate a tendency to order such detention, whereas article 9 of the Covenant stipulated that pre-trial detention should not be the rule. In addition, if a case was dismissed or the accused was discharged or acquitted, he or she could claim compensation when the detention had caused injury that was "manifestly abnormal and of particular gravity" (para. 126), which, in view of the high number of pre-trial detention orders, was hardly compatible with article 9, paragraph 5. It could obviously be argued that the pre-trial detention had not been illegal, since it had been ordered by the examining magistrate, but that was not a sufficient explanation.

32. Secondly, he would like to know whether the inhabitants of the overseas departments and territories had complete freedom of movement in metropolitan France, whether they could bring their families and work as soon as they arrived in France, and, generally speaking, whether they had all the rights enjoyed by a French citizen in France.

33. His third question concerned loss of French nationality, discussed in paragraph 190 of the report. He noted that persons who had acquired French citizenship through naturalization could lose their citizenship if they committed an act categorized as an offence that had a certain degree of seriousness but was unrelated to actual acquisition of nationality. He supposed that that rule did not apply to people who were French by birth and wondered whether it was compatible with article 26 of the Covenant, since in his view it constituted obvious discrimination among different categories of French people.

34. Fourthly, the legal aid mentioned in paragraph 232 of the report was designed to enable persons with insufficient resources to assert their rights before the law, but it appeared to apply only to certain categories of foreigners. He would like to know whether a foreigner unlawfully present in France who committed a murder or other serious offence was entitled to legal aid if he could not afford the services of a lawyer.

35. Mr. KRETZMER associated himself with all the questions asked, especially those relating to the different rules applicable to different branches of the executive responsible for maintaining public order. The explanations given concerning the context in which the special decree on the gendarmerie had been issued had not clarified the reasons for the different rules on the use of firearms, given the fact that police officers and gendarmes performed the same tasks.

36. He associated himself with all the questions asked in connection with articles 12 and 13 of the Covenant. He would also like to know the French Government's position with regard to people who, although not meeting precisely the definition of a refugee laid down in the 1951 Convention relating to the Status of Refugees, felt threatened for reasons other than race, religion, nationality, membership of a particular social group or political opinion, as set forth in article 1 of the Convention. There could, for example, be situations of discrimination on grounds of sex, such as those involving women from countries where excision was systematically practised; they might very well be afraid to return to their country and might apply for refugee status despite the fact that they did not meet the exact definition. The same was true of people whose lives were threatened, not by governmental forces but by other violent forces, and who did not feel that they would be protected in their country. The most recent example was obviously that of the Algerians. He would like to know France's policy towards them.

37. He agreed with other members of the Committee that the French Government appeared to be passing its responsibility towards asylum seekers onto private institutions by fining airlines which allowed passengers without papers to travel on their planes. He also associated himself with the concerns expressed about sending people back to their countries when they were in danger of being subjected to torture. Regarding expulsion, he had understood that a person who was refused the right to remain in the territory had 24 hours in which to institute proceedings, but he had also learned that in some cases people awaiting expulsion had been made to sign a paper waiving that right. He asked whether a 24-hour period was sufficient and requested further details about that paper.

38. The question of complaints against the police and the corresponding inquiries had already been raised. The situation appeared to be complicated, and in any event was not clear to him. As he understood it, the prosecutor had a free hand in deciding whether or not to open an inquiry into cases of police brutality against members of the public. It was true that victims could institute a criminal indemnity action and that there was a police supervisory body empowered to investigate. It would, however, be useful to know whether there was some other independent mechanism empowered to investigate action by the police without need for the victim to institute proceedings. Amnesty International had drawn the Committee's attention to the

case of a young Rom who had entered France illegally in a convoy of vehicles from the former Yugoslavia, then at war, in August 1995. The police had opened fire and the boy had been killed. The other Roma had been expelled, and none of them had been called as a witness in the inquiry into the boy's death. The case raised two questions, that of inquiries into police action and relevant guarantees, and that of the sending-back of people coming from a war-stricken region.

39. Mrs. MEDINA QUIROGA thanked the French delegation for its very informative replies. She associated herself with the concern expressed by the other members of the Committee about the right of asylum, and especially the practice of passing to airlines responsibility for deciding who was entitled to seek asylum. She would also like to know what legal protection was given to refugees who arrived by sea and were kept on board ships. The delegation had explained that there were regulations governing access by humanitarian organizations and even UNHCR to waiting zones, but clarification should be provided on the nature and scope of those regulations. The delegation had also acknowledged that the practice of expulsions by charter raised a problem; she wondered whether that meant that it would be terminated. Asylum seekers might include people at serious risk of suffering bodily harm, for example genital mutilation, forced sterilization, torture or even forced marriage. Could such grounds be invoked in an application for refugee status? It would also be interesting to have statistics on the number of expulsion orders which had resulted from the emergency procedure and the number of cases where an expulsion order had been revoked after the person had already been expelled. The situation of individuals being held in a waiting zone while efforts were being made to find a country willing to accept them also needed to be clarified. Were they given financial aid? Did they have working papers? What were the living conditions of those with children?

40. A number of questions arose in connection with article 9 of the Covenant. Given that xenophobia was on the rise in Europe, the police might very well be arresting an excessive number of young people and members of ethnic minorities; she would accordingly appreciate receiving statistics from the delegation. Since the prosecutor had the power to initiate inquiries and institute proceedings for police brutality, it would be useful to know whether he was obliged, or simply empowered, to do so. If he was simply empowered, the delegation might give some indication of the frequency with which prosecutors instituted proceedings of their own motion in such cases. According to the information available, it was often also necessary to bring in civil indemnity action, and she wondered whether that was because such proceedings were to the victim's advantage or whether they were necessary because no other proceedings had been instituted. Regarding the arrest of minors, paragraph 130 of the report stated, "with regard to ordinary offences ... pre-trial detention ... has been prohibited ...". She would like to know which authority determined whether the offence was an ordinary offence, and what criteria were used.

41. Concerning article 10 of the Covenant, she asked whether the new prison regulations adopted in 1996 contained provisions governing not only incommunicado detention but also solitary confinement, and would like details on the conditions for placing a prisoner in solitary confinement. She would also like to know whether girls were separated from adults in women's prisons.

In connection with article 14 of the Covenant, she noted that paragraphs 242 and 243 of the report dealt with confession, but said nothing about cases where confessions had been obtained through ill-treatment. She would like to know whether such confessions were automatically excluded, and if so, whether they were excluded in accordance with a legislative provision or simply as a matter of case law. In addition, she inquired which party had the burden of proof in determining whether confessions had been obtained under duress. To have an idea of the scope of the anti-terrorism legislation, she asked who actually decided whether a case came within the purview of that legislation or whether it should be brought before an ordinary court, whether precise criteria had been laid down for that purpose, how many people had been placed in detention under the legislation, and under what conditions.

42. She endorsed Mr. Lallah's concerns about the protection of family life and expressed the hope that the delegation would provide all necessary explanations in its replies to the questions in the second part of the list of issues.

43. Mr. POCAR said that the first point to be made about the periodic report was that, for a country such as France, a delay of four years - a period equal to the time between two reports - was far too long. States' obligations under article 40 provided the basis for the international monitoring system set forth in the Covenant, and it might be asked what the precise reasons for such a delay could be.

44. Paragraph 87 of the report stated that, following the abolition of the death penalty, a number of articles of the Code of Military Justice concerning the death penalty had also been abrogated or amended; he wondered whether the death penalty had been totally abolished in the military system of justice. He also wondered why France had not yet ratified the second Optional Protocol to the Covenant aimed at the abolition of the death penalty. He drew attention to the Committee's two general comments on article 6 of the Covenant (general comments 6[16] and 14[23]), in which it expressed the view that article 6 should not be interpreted narrowly and that it referred not only to the death penalty but to all activities endangering life, including the testing of nuclear weapons. France had conducted nuclear weapons tests, even though it was considered in scientific circles that the consequences of such experiments were unpredictable and not entirely without danger. It must therefore be asked what measures the French authorities had taken to protect the people living in the test areas.

45. France had entered a reservation to article 13 of the Covenant in the following terms: "The Government of the Republic declares that article 13 cannot derogate ... from the other instruments concerning the expulsion of aliens in force in those parts of the territory of the Republic in which the Order of 2 November 1945 does not apply." He would like to know the scope of the instruments from which article 13 could not derogate. The Government of France had also entered a reservation to article 14, paragraph 5, as stating a general principle to which the law might make limited exceptions, for example, in the case of certain offences subject to police courts and in the case of criminal offences. He would like to know exactly what offences that interpretation applied to.

46. Mr. SCHEININ joined all those members of the Committee who had commented on the wealth of information provided orally by the delegation. He associated himself with all the questions asked about the situation of asylum seekers, and also asked how the French authorities guaranteed the right to apply for asylum when they ordered asylum seekers to be confined on board ships and thereby prevented them from going ashore to submit their application.

47. The role of the gendarmerie and the regulations on firearms raised some problems. The fact that regulations on the use of firearms by the gendarmerie were set forth in an administrative circular published in 1945 might be considered sufficient to indicate incompatibility with current international guarantees. The question of bringing legislation into line with current international standards also arose in connection with the military system of justice, specifically the military system of detention for disciplinary offences. France had entered a reservation to articles 9 and 14, and there was no information in the report on that detention system. France had been a party to the Covenant for 15 years, however, and it must have conducted an assessment of the functioning of the military system of detention in relation to the provisions of the Covenant. He would like to know its results.

48. Mr. YALDEN welcomed the French delegation and thanked it for its clear, concise and thorough report.

49. His questions mainly related to the acquisition of French nationality. He would appreciate receiving a breakdown of naturalized persons by country of origin. What was the proportion of people from European countries in comparison with other regions? He would also like details on the minimum requirements for obtaining nationality and asked whether the provisions being prepared, aimed at establishing the jus soli principle, would tend to make acquisition of French nationality easier or more difficult. With regard to illegal immigrants, he asked what the current policy was towards "mass expulsions" or expulsions by charter. He also wondered what was meant by the expression "serious threat to public order" justifying the expulsion of an alien (report, para. 192), as it was very broad. Moreover, since expulsions were ordered by the Ministry of the Interior, he would like to know whether the decision could be challenged and before which authority. He also inquired whether immigrants without identity papers could submit complaints to the Consultative Commission on Human Rights or the ombudsman. In connection with control mechanisms, he asked whether there was an institution independent of the ministry responsible for supervising prison administration and empowered to receive complaints from prisoners.

50. The CHAIRMAN thanked the French delegation for its detailed information, but noted that several points remained to be clarified. The members of the Committee had expressed various concerns with which he associated himself, in particular regarding the delay in submitting the report. He was also concerned at the contents of paragraph 213 of the report to the effect that only the Ministry of Justice could initiate disciplinary proceedings against judges.

51. Regarding the implementation of the provisions of article 9, paragraphs 3 and 5, of the Covenant, paragraph 126 of the report stated that a person who had been detained could claim compensation if the detention had

caused him injury that was manifestly abnormal and of particular gravity. That language was obviously too general, and the "manifestly abnormal" nature and "particular gravity" of the injury were very difficult to determine. Amnesty International had drawn the Committee's attention to a number of deficiencies in the administration of justice, specifically in the treatment of human rights violations attributable to law enforcement officers, a situation which apparently made it impossible for the victims to file a remedy. The French delegation had stated that the authorities had taken measures and punished the culprits in several cases, which was commendable. But had punishment been meted out to the members of the gendarmerie who had arrested and ill-treated 16 trade-union members in Papeete for protesting against the resumption of French nuclear testing in the Pacific? He agreed with Mr. Pocar that in certain circumstances nuclear testing could lead to a violation of article 6 of the Covenant, and would like to know what measures had been taken by the French authorities to ensure that that did not occur.

52. He asked whether the decisions of the special courts established under the anti-terrorist legislation were subject to appeal and, if so, before which authority and in what circumstances. Terrorism obviously raised a difficult problem, for France and for other countries, but the authorities must provide appropriate guarantees.

53. The 1989 amnesty measures in respect of New Caledonia constituted an obvious violation of the Covenant, and he referred the French delegation to the Committee's general comment 20 (HRI/GEN/1/Rev.2). He would also like to know how those measures could be reconciled with article 2 of the Covenant, and in particular the Committee's interpretation of the article.

54. France apparently did not admit threat of persecution as a ground for political asylum unless it came from the State. If the threats did not originate from a government agency, France apparently refused to grant refugee status. That was a rather harsh approach, and he drew the delegation's attention to the position of the Canadian authorities, who took threats other than those by State agents into account.

55. He invited the French delegation to reply to the additional oral questions asked by members of the Committee in connection with part I of the list (CCPR/C/60/Q/FRA/3); he believed it would like a few minutes in which to prepare its replies.

The meeting was suspended at 5.15 p.m. and resumed at 5.35 p.m.

56. Mr. PERRIN DE BRICHAMBAUT (France) thanked the members of the Committee for their many pithy, well-thought-out questions, to which his delegation would attempt to reply as thoroughly as possible. The questions were an indication of the Committee's confidence in France and its expectations of a major democracy like France in the area of the protection of human rights.

57. First, the French authorities wished to apologize to the Committee for the delay in submitting the third periodic report (CCPR/C/76/Add.7). That having been said, there were some attenuating circumstances, namely the two recent major elections in France, which had somewhat distracted the political authorities from their international human rights obligations, and the size of

the delegation which had come to present France's third periodic report to the Committee, which reflected both the growing complexity of government agencies in contemporary societies and the need to mobilize a very large number of agencies in order to submit a comprehensive and accurate report. His delegation nevertheless assured the Committee that it would make every effort to ensure that subsequent periodic reports were submitted on time.

58. After making a few general remarks, he would yield the floor to other members of his delegation who would reply in more detail on points within their areas of expertise. On the question of terrorism, France had unfortunately experienced a significant wave of violence in recent years, which had made it necessary to adopt particularly strict security measures in the framework of the "Vigipirate" plan, and which had pointed up the need for a legislative instrument that would make provision for emergency procedures. The authorities made only discriminating and moderate use of that mechanism, however. He was not able to state the number of proceedings recently instituted under the anti-terrorist legislation, but he could say that 32 individuals had been convicted in 1995.

59. Questions had been asked about the membership of the assize courts trying cases involving terrorism. The assize court, which now comprised seven judges, was the result of the measures taken to end the previous situation, in which members of the jury had received death threats, and was an attempt to ensure that the administration of justice took place under the safest and fairest possible conditions. Experience had so far shown that those courts did not detract from the legitimate interests of the defence, and none of their decisions had been challenged in the European Court of Human Rights, despite the fact that members of the legal profession in France had been paying increasing attention to the Court and were familiar with all of its possibilities. His Government could not fail to feel a certain sympathy towards other countries faced with similar problems and tried to give them the support they needed, within the strict limits of the law.

60. Some members of the Committee had criticized his delegation for failing to provide enough specific examples of protection of human rights in France. He wished to reassure the Committee that all the groups and bodies working to defend human rights in his country were extremely dynamic and energetic.

61. The NGOs, in particular, were increasingly active, and their work was followed up by the National Consultative Commission on Human Rights, which worked closely with, and made recommendations to, the Prime Minister on a fully independent basis. His delegation would revert to the role of the Commission later.

62. He also wished to stress the dynamic work being done by the judiciary, which had recently shown its independence in a number of cases involving political party financing and fraudulent use of company assets, which had completely changed the public perception of the judiciary's role and the attitude of prominent members of society to their own behaviour.

63. Members of the French judiciary and private individuals alike were increasingly interested in the activities of the international human rights courts, some 1,500 persons having submitted applications to the European

Commission on Human Rights in 1996. Some of those complaints had been found inadmissible, essentially under the subsidiarity principle. Generally speaking, his Government received nearly 100 requests for observations in reply to communications from private individuals every year. In that connection, he referred the Committee to paragraph 36 of the French report. Amicable settlements often took the form of financial compensation of the victim. Approximately half of the applications led to such a payment. In 1996, France had submitted observations concerning 14 cases, all involving very important principles; he assured the Committee that the case law of the European Court of Human Rights was closely followed by all French courts of law. In fact, the Court had ruled against France more often than any other country in recent years. That did not mean that the proportion of applications that had led to judgements against France was higher than for other countries; it simply meant that French people did not hesitate to apply to an international forum in order to assert their rights. The isolated cases of ill-treatment of private individuals by law-enforcement officers must be viewed against that background. He did not deny the occurrence of some such cases, which had been rightly denounced by NGOs, but would draw members' attention to the fact that, in a democratic society like France where the press and NGOs were increasingly active, such cases were reported more often than in the past, and that the French Government provided considerable support in terms of educational and training measures for police and prison officers. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which had visited France three times in recent years, had stated in the report on its 1996 visit that it had received no complaints of human rights violations in prisons. On the other hand, the Committee had mentioned a few cases of police brutality, which were being thoroughly investigated by the competent French authorities.

64. The dual nature of the police forces in France, which also appeared to trouble some members of the Committee, was a national characteristic. The role of the gendarmerie was essentially rural: it performed police functions and maintained order in the country areas; once a town reached a certain size, those functions were transferred to the municipal or, in some cases, national police. The gendarmerie was a deep-rooted institution in French society, and its communication skills and understanding were traditionally a very positive element of rural society, which largely explained why the two police forces had existed side by side until the present day. His delegation had taken due note of the Committee's concern at apparent divergencies between the gendarmerie and the police, in particular with regard to rules on the use of firearms, but it assured the Committee that both were subject to the same case law, which was scrupulously applied.

65. Regarding nationality, he explained that an average of 90,000 persons acquired French nationality every year and that 40,000 of them were naturalized by decree. As an integration measure, the authorities would endeavour to reduce the waiting period to 12 months, in order to accelerate the naturalization process.

66. On the matter of nuclear testing in the Pacific, he said that, at the request of his Government, an international scientific advisory committee that included IAEA representation had been established to conduct studies on the radiological situation in the atolls where the facilities of the Pacific

experimentation centre had been located up to the time when the tests had been concluded. The committee was to conduct a number of specific long-term studies, but had not found anything of the least concern so far. His Government had also asked a professor from the University of Minnesota to head a mission of experts which would conduct additional studies in the geological and hydrogeological fields. Various States and NGOs had instituted proceedings before a total of 13 bodies, including the Human Rights Committee, with the aim of having the latest series of French nuclear tests declared illegal. In none of those cases had France been condemned.

67. The previous Government had begun a number of reforms, relating in particular to the assize courts and the abolition of national service. There were also plans for a reform of the organization of the judiciary, and a commission known as the Truche Commission had recently submitted its report on the question to the new Government. The Government had announced several other changes, especially regarding immigration requirements and the right to French nationality. Generally speaking, France had initiated a sustained and dynamic process of reform.

68. The questions on the overseas departments and territories and their specific cultural features would be answered in connection with part II of the list of issues (CCPR/C/60/Q/FRA/3).

69. Mr. FAUGERE (France) said that the National Police Inspectorate had a clearly defined mission with respect to procedures for administrative inquiries into cases of ill-treatment by State employees, which it took very seriously. In particular, judicial police officers were responsible for administrative and judicial inquiries, with competence for all personnel involved and for all types of misconduct. There were three disciplinary offices subordinate to the Inspectorate-General; there were also two regional branches (Lyon and Marseille) and a central disciplinary office covering the rest of France. In addition to the individual responsibilities which such procedures brought to light, they also pointed up difficulties due to the way a particular department was organized or to certain habits. The conclusions of the inquiries generally enabled such structural defects to be corrected. He referred the Committee to two Ministry of the Interior directives of 1995 and 1997, the most recent of which stressed standards of professional conduct and the priority which a superior officer must accord to them. In short, the chief must set an example, and he himself was monitored by his own superiors. Both of the above-mentioned directives were recent, but they would undoubtedly have an effect. A new directive was being prepared, for incorporation into the internal regulations of the national police, and would contain important provisions on the protection of persons detained or held in custody by the national police, in particular regarding the use of handcuffs. All those measures were examples of the way in which the French authorities took account of the observations addressed to them in the context of the implementation of the Covenant.

70. On the difficult matter of Spanish nationals of Basque origin, raised by Mr. Prado Vallejo, he acknowledged that the procedure for sending Spanish nationals of Basque origin who were ETA activists back to their country of origin was in most cases a judicial extradition. In some cases, it was an administrative procedure under a 1945 ordinance relating to the sojourn of

aliens in France, which provided for the possibility of emergency expulsion, in cases of overriding necessity for State security, of aliens in French territory who constituted a very serious threat to public order. The Spanish nationals of Basque origin who had been expelled under that ordinance had frequently been sentenced to heavy penalties for acts committed in French territory which seriously endangered public security in France. Those administrative procedures had indeed led to the sending-back of a number of Spanish nationals, but always after a thorough examination of their personal situation, and in particular the conditions in which the return would take place. Some of the persons expelled had submitted applications to the European Commission of Human Rights; he wished to emphasize that, in a decision of 5 December 1996, the Court had validated the position of the French authorities to the effect that Spain was a State governed by the rule of law and that there was nothing to indicate that the administrative procedure applied in those cases had amounted to covert extradition. Furthermore, according to the French Government's information, a person sent back who had not been prosecuted in Spain was neither detained nor arrested by the Spanish police. He stressed that the French authorities did not hand the person over to the Spanish Government, but simply expelled him from French territory. In cases where the individual had previously been granted refugee status in France, it went without saying that no expulsion order could be issued against him and, at worst, he was subjected to a restricted residence order in French territory. Spain was under very serious threat from terrorism, and the French Government was bound to show understanding of that fact when it examined problems relating to the presence of Spanish nationals of Basque origin in French territory. However, due process was respected in all cases.

71. The CHAIRMAN invited the members of the Committee to continue their consideration of France's third periodic report (CCPR/C/76/Add.7) at a subsequent meeting.

The meeting rose 6.05 p.m.